

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 19, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 403

Introduced by Assembly Member ~~Campos Alejo~~
(Principal coauthor: ~~Senator Alquist~~)

February 14, 2011

~~An act to amend Sections 116365.01 and 116365.5 of the Health and Safety Code, relating to drinking water standards. An act to amend Section 13350 of the Water Code, relating to water quality, and to make an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 403, as amended, ~~Campos Alejo. Public drinking water standards: hexavalent chromium. Water quality: integrated plan: Salinas Valley.~~

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act imposes various penalties for a violation of its requirements. The state act requires specified penalties be deposited into the Waste Discharge Permit Fund and separately accounted. The state act requires moneys in the fund, upon appropriation by the Legislature, to be expended by the state board to assist regional boards and prescribed other public agencies in cleaning up or abating the effects of waste on

waters of the state or to assist a regional board attempting to remedy a significant unforeseen water pollution problem.

This bill would appropriate \$2,000,000 to the state board for use by the Greater Monterey County Regional Water Management Group (management group) to develop an integrated plan to address the drinking water and wastewater needs of disadvantaged communities in the Salinas Valley whose waters have been affected by waste discharges, thereby making an appropriation. The bill would require the management group to consult with specified entities and to submit to the Legislature by January 1, 2016, the plan developed by the group.

The bill would make specified findings and declarations that the special legislation contained in the act is necessarily applicable only to Monterey County.

~~The Calderon-Sher Safe Drinking Water Act of 1996 requires the State Department of Public Health to, among other things, adopt regulations relating to primary and secondary drinking water standards for contaminants in drinking water. Existing law requires the Department of Finance to take specified actions regarding the proposed drinking water standards not more than 90 days from when the Department of Public Health submits them. Existing law requires the department to establish a primary drinking water standard for hexavalent chromium on or before January 1, 2004. Existing law requires the department to report to the Legislature on the progress in developing a primary drinking water standard for hexavalent chromium by January 1, 2003. Violation of certain provisions relating to public water systems is a crime.~~

~~This bill would require the department to post its progress subsequent to January 1, 2003, on the establishment of the standard on the department's Internet Web site. The bill would include the adoption of a primary drinking water standard for hexavalent chromium among the proposed regulations relating to maximum contaminant levels for primary or secondary water standards that are subject to a review by the Department of Finance of not more than 90 days.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13350 of the Water Code is amended to
2 read:

1 13350. (a) A person who (1) violates a cease and desist order
2 or cleanup and abatement order hereafter issued, reissued, or
3 amended by a regional board or the state board, or (2) in violation
4 of a waste discharge requirement, waiver condition, certification,
5 or other order or prohibition issued, reissued, or amended by a
6 regional board or the state board, discharges waste, or causes or
7 permits waste to be deposited where it is discharged, into the waters
8 of the state, or (3) causes or permits any oil or any residuary
9 product of petroleum to be deposited in or on any of the waters of
10 the state, except in accordance with waste discharge requirements
11 or other actions or provisions of this division, shall be liable civilly,
12 and remedies may be proposed, in accordance with subdivision
13 (d) or (e).

14 (b) (1) A person who, without regard to intent or negligence,
15 causes or permits a hazardous substance to be discharged in or on
16 any of the waters of the state, except in accordance with waste
17 discharge requirements or other provisions of this division, shall
18 be strictly liable civilly in accordance with subdivision (d) or (e).

19 (2) For purposes of this subdivision, the term “discharge”
20 includes only those discharges for which Section 13260 directs
21 that a report of waste discharge shall be filed with the regional
22 board.

23 (3) For purposes of this subdivision, the term “discharge” does
24 not include an emission excluded from the applicability of Section
25 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to
26 Environmental Protection Agency regulations interpreting Section
27 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

28 (c) A person shall not be liable under subdivision (b) if the
29 discharge is caused solely by any one or combination of the
30 following:

31 (1) An act of war.

32 (2) An unanticipated grave natural disaster or other natural
33 phenomenon of an exceptional, inevitable, and irresistible
34 character, the effects of which could not have been prevented or
35 avoided by the exercise of due care or foresight.

36 (3) Negligence on the part of the state, the United States, or any
37 department or agency thereof. However, this paragraph shall not
38 be interpreted to provide the state, the United States, or any
39 department or agency thereof a defense to liability for any
40 discharge caused by its own negligence.

1 (4) An intentional act of a third party, the effects of which could
2 not have been prevented or avoided by the exercise of due care or
3 foresight.

4 (5) Any other circumstance or event that causes the discharge
5 despite the exercise of every reasonable precaution to prevent or
6 mitigate the discharge.

7 (d) The court may impose civil liability either on a daily basis
8 or on a per gallon basis, but not on both.

9 (1) The civil liability on a daily basis shall not exceed fifteen
10 thousand dollars (\$15,000) for each day the violation occurs.

11 (2) The civil liability on a per gallon basis shall not exceed
12 twenty dollars (\$20) for each gallon of waste discharged.

13 (e) The state board or a regional board may impose civil liability
14 administratively pursuant to Article 2.5 (commencing with Section
15 13323) of Chapter 5 either on a daily basis or on a per gallon basis,
16 but not on both.

17 (1) The civil liability on a daily basis shall not exceed five
18 thousand dollars (\$5,000) for each day the violation occurs.

19 (A) When there is a discharge, and a cleanup and abatement
20 order is issued, except as provided in subdivision (f), the civil
21 liability shall not be less than five hundred dollars (\$500) for each
22 day in which the discharge occurs and for each day the cleanup
23 and abatement order is violated.

24 (B) When there is no discharge, but an order issued by the
25 regional board is violated, except as provided in subdivision (f),
26 the civil liability shall not be less than one hundred dollars (\$100)
27 for each day in which the violation occurs.

28 (2) The civil liability on a per gallon basis shall not exceed ten
29 dollars (\$10) for each gallon of waste discharged.

30 (f) A regional board shall not administratively impose civil
31 liability in accordance with paragraph (1) of subdivision (e) in an
32 amount less than the minimum amount specified, unless the
33 regional board makes express findings setting forth the reasons
34 for its action based upon the specific factors required to be
35 considered pursuant to Section 13327.

36 (g) The Attorney General, upon request of a regional board or
37 the state board, shall petition the superior court to impose, assess,
38 and recover the sums. Except in the case of a violation of a cease
39 and desist order, a regional board or the state board shall make the
40 request only after a hearing, with due notice of the hearing given

1 to all affected persons. In determining the amount to be imposed,
2 assessed, or recovered, the court shall be subject to Section 13351.

3 (h) Article 3 (commencing with Section 13330) and Article 6
4 (commencing with Section 13360) apply to proceedings to impose,
5 assess, and recover an amount pursuant to this article.

6 (i) A person who incurs any liability established under this
7 section shall be entitled to contribution for that liability from a
8 third party, in an action in the superior court and upon proof that
9 the discharge was caused in whole or in part by an act or omission
10 of the third party, to the extent that the discharge is caused by the
11 act or omission of the third party, in accordance with the principles
12 of comparative fault.

13 (j) Remedies under this section are in addition to, and do not
14 supersede or limit, any and all other remedies, civil or criminal,
15 except that no liability shall be recoverable under subdivision (b)
16 for any discharge for which liability is recovered under Section
17 13385.

18 (k) Notwithstanding any other law, all funds generated by the
19 imposition of liabilities pursuant to this section shall be deposited
20 into the Waste Discharge Permit Fund. These moneys shall be
21 separately accounted for, and shall be expended by the state board,
22 upon appropriation by the Legislature, to assist regional boards,
23 and other public agencies with authority to clean up waste or abate
24 the effects of the waste, in cleaning up or abating the effects of the
25 waste on waters of the state, or for the purposes authorized in
26 Section 13443, or to assist in implementing Chapter 7.3
27 (commencing with Section 13560).

28 (l) (1) *The Legislature hereby appropriates to the state board*
29 *two million dollars (\$2,000,000) from the moneys deposited into,*
30 *and separately accounted for in, the Waste Discharge Permit Fund*
31 *pursuant to subdivision (c) of Section 13264, subdivision (f) of*
32 *Section 13268, subdivision (f) of this section, and subdivision (n)*
33 *of Section 13385 for use by the Greater Monterey County Regional*
34 *Water Management Group to develop an integrated plan to address*
35 *the drinking water and wastewater needs of disadvantaged*
36 *communities in the Salinas Valley whose waters have been affected*
37 *by waste discharges.*

38 (2) *Funds appropriated pursuant to subparagraph (1) shall be*
39 *available for assessment and feasibility studies necessary to*
40 *develop the plan.*

1 (3) *The Greater Monterey County Regional Water Management*
2 *Group shall develop the plan in consultation with appropriate*
3 *stakeholders, including the state board, the State Department of*
4 *Public Health, and representatives of disadvantaged communities.*

5 (4) *The plan shall include identification of disadvantaged*
6 *communities without safe drinking water and recommendations*
7 *for planning, infrastructure, and other water management actions*
8 *that achieve affordable, sustainable solutions for disadvantaged*
9 *communities, including communities without public water systems.*

10 (5) *On or before January 1, 2016, the Greater Monterey County*
11 *Regional Water Management Group shall submit to the Legislature*
12 *the plan developed pursuant to this subdivision.*

13 (6) (A) *The requirement for submitting a plan imposed under*
14 *paragraph (5) is inoperative on January 1, 2020, pursuant to*
15 *Section 10231.5 of the Government Code.*

16 (B) *A plan to be submitted pursuant to paragraph (5) shall be*
17 *submitted in compliance with Section 9795 of the Government*
18 *Code.*

19 SEC. 2. *The Legislature finds and declares that a special law*
20 *is necessary and that a general law cannot be made applicable*
21 *within the meaning of Section 16 of Article IV of the California*
22 *Constitution because of the unique needs for water faced by*
23 *disadvantaged communities in the Salinas Valley whose waters*
24 *have been affected by waste discharges.*

25 ~~SECTION 1. The Legislature finds and declares all of the~~
26 ~~following:~~

27 ~~(a) Chapter 602 of the Statutes of 2001 (Senate Bill 351)~~
28 ~~required the State Department of Public Health to adopt a primary~~
29 ~~drinking water standard for hexavalent chromium. As of 2011,~~
30 ~~this has not yet occurred.~~

31 ~~(b) Hexavalent chromium is recognized as a human carcinogen.~~
32 ~~Thus, it is vital that the state take swift action to limit exposure~~
33 ~~and protect public health.~~

34 ~~SEC. 2. Section 116365.01 of the Health and Safety Code is~~
35 ~~amended to read:~~

36 ~~116365.01. (a) (1) Notwithstanding any other provision of~~
37 ~~law or regulation, including Chapter 3.5 (commencing with Section~~
38 ~~11340) of Part 1 of Division 3 of Title 2, and Part 3 (commencing~~
39 ~~with Section 13000) of the Government Code, and except as~~
40 ~~provided in subdivision (b), for any proposed regulation that relates~~

1 to the maximum contaminant levels for primary or secondary
2 drinking water standards, as defined in subdivisions (c) and (d) of
3 Section 116275, including, but not limited to, a primary drinking
4 water standard for hexavalent chromium, that is submitted by the
5 department to the Office of Administrative Law for review,
6 pursuant to Section 11349.1 of the Government Code, the
7 Department of Finance shall take no longer than 90 days,
8 commencing on the date that the department submits the rule or
9 regulation to the Department of Finance, to do any of the following:

10 (A) Review any estimate pursuant to subdivision (c) of Section
11 11357 of the Government Code.

12 (B) Provide a letter or documentation, if required, pursuant to
13 Section 11349.1 of the Government Code.

14 (C) Complete any other function in connection with the adoption
15 of proposed regulations that relates to the maximum contaminant
16 levels for primary or secondary drinking water standards, including,
17 but not limited to, a primary drinking water standard for hexavalent
18 chromium, as required pursuant to any provision of Chapter 3.5
19 (commencing with Section 11340) of Part 1 of Division 3 of Title
20 2 of the Government Code.

21 (D) Return the proposed regulation if the department has not
22 prepared the estimate required by paragraph (6) of subdivision (a)
23 of Section 11346.5 of the Government Code, in accordance with
24 Section 11357 of the Government Code.

25 (2) If the Department of Finance returns the proposed regulation
26 pursuant to subparagraph (D) of paragraph (1), an additional 90-day
27 time period under this section shall begin when the regulations are
28 resubmitted by the department to the Department of Finance.

29 (3) If the Department of Finance takes longer than 90 days to
30 complete any of the functions set forth in subparagraphs (A) to
31 (D), inclusive, of paragraph (1), the proposed regulations shall be
32 exempt from any provision of Chapter 3.5 (commencing with
33 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
34 Code that requires the involvement of the Department of Finance,
35 and the department and the Office of Administrative Law shall
36 proceed with all other applicable procedures in connection with
37 the adoption of proposed regulations.

38 (b) Subdivision (a) shall not apply to any regulation adopted by
39 the department that reduces, weakens, lessens, or otherwise

1 ~~undermines any requirement established pursuant to this chapter~~
2 ~~for the protection of public health.~~

3 ~~SEC. 3. Section 116365.5 of the Health and Safety Code is~~
4 ~~amended to read:~~

5 ~~116365.5. (a) The State Department of Public Health shall,~~
6 ~~on or before January 1, 2004, establish a primary drinking water~~
7 ~~standard for hexavalent chromium that complies with the criteria~~
8 ~~established under Section 116365.~~

9 ~~(b) The department shall report to the Legislature on its progress~~
10 ~~in developing a primary drinking standard for hexavalent chromium~~
11 ~~by January 1, 2003. The department shall post a report on its~~
12 ~~progress subsequent to that date on its Internet Web site.~~